

EXHIBIT 2

Bryson, Santana and Joshua v. Rough Country, LLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

SANTANA BRYSON and JOSHUA)
BRYSON, as adminsitrators of)
the Estate of C.Z.B. and as)
surviving parents of C.Z.B., a)
deceased minor.,)

PLAINTIFF,)

VS.) CASE NO.: 2:22=CV=017-RWS

ROUGH COUNTRY LLC,)

DEFENDANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRIDAY, MAY 5, 2024

APPEARANCES:

FOR THE PLAINTIFF:

CANNELLAS NYDER

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(Appearances continued next page.)

REPORTED BY: JUSTUS BALENTINE, CSR 13859

1 independent and dependant variables?

2 A. Probably, yes.

3 Q. And independent is a variable that the
4 researcher changes?

5 A. Yes.

6 Q. And the dependant variable, are those variables
7 that change as a result of the independent variable;
8 correct?

9 A. Correct.

10 Q. Okay. Do you agree that a good experiment
11 should change just one variable?

12 A. Not always. I mean ideally, sure, but there are
13 almost never can you only do one thing.

14 Q. The gold standard would be to just change one
15 variable?

16 MR. HILL: Object to form.

17 THE WITNESS: I don't know if it's the gold
18 standard, but it would be the ideal world, Nirvana.

19 BY MS. CANNELLA:

20 Q. And if you change just one variable from the
21 control, then you can really isolate the effects of that
22 one variable; do you agree with that?

23 A. Yes. That's why it would be Nirvana or ideal.

24 Q. Okay. And do you agree that the more variables a
25 researcher changes, the more difficult it is to isolate

1 which of those variables caused the changed condition in
2 test subject?

3 A. Yes, in general.

4 Q. And can you think of a way to use a control to
5 design a set of crashes that would be able to isolate the
6 amount of crush that is due just to a lift in a crash?

7 A. Can I think of a test? Is that what the first
8 part of the question was?

9 Q. Yes. Can you think of a way to use a control to
10 design a set of crash tests that would be able to isolate
11 the amount of crush that is due just to the lift?

12 A. Yes.

13 Q. And what is that?

14 A. Well, you -- we would take a lifted truck, which
15 is what you're talking about, about a lift, a lift kit,
16 so we would take a lifted truck and do a crash, or we
17 would look at a crash with a lifted truck that already
18 happened. And then we would take a non-lifted truck,
19 sort of an OEM, or original equipment, OE truck, and do
20 essentially the same crash.

21 So with the same two vehicle, same vehicle
22 lineup, same speeds, et cetera, and then compare the two.

23 Q. Okay. And do you agree there were at least two
24 independent variables in the crash test that Exponent did
25 in this case?

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1 Q. Okay. A couple of questions on that. Have you
2 ever done a crash test with an instrumented Hybrid III
3 dummy?

4 A. Yes.

5 Q. And how often does the Hybrid III dummy exactly
6 match the person who was in the wreck?

7 A. Oh, maybe half the time.

8 Q. Okay. Second question is, it's your opinion, as
9 I understand it, and correct me if I'm wrong, that the
10 cargo would have increased the forward movement of the
11 second row in the crash test if it had been added enough
12 to cause Cohen's death; correct?

13 A. Let me clarify.

14 Q. Okay.

15 A. So in our test at Exponent, had we known, i.e.
16 had the Brysons known exactly what was in the cargo area
17 in the subject vehicle at the time of the crash and
18 exactly where it was, had we recreated that in our test
19 at Exponent, would there have been more deformation or
20 more forward movement of the Row 2 seat backs, and
21 therefore had Cohen Bryson been in our Exponent crash
22 test, would he still have suffered his fatal injuries in
23 our crash test, I think that's what you're asking, and
24 the answer is yes.

25 Q. Would he have suffered the same injuries, fatal

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1 injuries, in the Exponent crash test without the cargo?

2 A. Still likely because of the amount of
3 deformation that we can see on the -- mostly on the
4 videos of the crash test. So even so, yes, but there
5 would have been more deformation forward had all the
6 stuff been in the cargo area.

7 Q. How do you know that he would have died in the
8 Exponent crash test, even without the cargo?

9 A. Because I have seen the crash test results
10 including the videos that show the deformation and
11 forward movement of the Row 2 seat backs, and it's very
12 violent, it's very fast, it's very -- it's a lot of
13 movement, and so all of that structure would have been
14 pushed right into the back of Master Bryson.

15 Q. So then the cargo is irrelevant?

16 A. Well, not really irrelevant, like let's not talk
17 about it at all because it was part of the subject crash.

18 Q. And isn't it true that if the Exponent crash
19 test had included a Hybrid III instrumented dummy in the
20 same place that Cohen was, then we would have a very good
21 idea of whether he would have survived, but for the
22 cargo, regardless of the cargo?

23 MR. HILL: Object to form.

24 THE WITNESS: So in other words, had we put a
25 dummy, either an infant or three-year-old dummy, neither

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1 of which match Cohen Bryson, in the spot, in the No. 4
2 position, and ran the Exponent test -- an instrumented
3 child dummy, and ran the Exponent test, we would have had
4 a really good idea, is what you're saying, of whether he
5 would have had fatal injuries?

6 BY MS. CANNELLA:

7 Q. Correct.

8 A. We would have had numbers, but we already know
9 that based on the movement and deformation of the rear
10 structures of the Escape.

11 Q. Well, you wouldn't have just had numbers, you
12 would have had numbers that correspond to injury values;
13 correct?

14 A. Right, right, exactly. We would have had
15 numbers.

16 Q. And that's -- sorry. I didn't mean to interrupt
17 you.

18 That's what NHTSA and car manufacturers use to
19 determine whether someone is likely to survive a crash;
20 correct?

21 A. In frontal and side crashes, yes, that's what
22 they use.

23 Q. Okay. The -- you said something else I wanted
24 to ask you about, and I think I've lost it now.

25 Oh, it's your opinion, then, that you can tell

1 that Cohen would have died in this crash just by looking
2 at the crash test videos and what's -- and the violence,
3 you said, of the movement inside the car; correct?

4 A. I mean, it's not just watching the videos.
5 That's the most obvious way to see how much movement
6 there is and how violent it is, et cetera, but based on
7 my experience in injuries, biomechanics, et cetera, and
8 all the other crash tests that I've seen and performed
9 and all the literature regarding real-world crashes as
10 well as crash tests, then I can see that that would have
11 resulted also in catastrophic, i.e. fatal injuries had
12 Master Bryson been in the Exponent test.

13 Q. Is there any NHTSA procedure that allows someone
14 to decide whether a crash is survivable or someone's
15 likely to get an injury based on looking at the crash
16 tests without any dummy data at all?

17 A. A NHTSA procedure, no. But they also don't --
18 there is no NHTSA procedure for injuries in rear crashes
19 at all.

20 Q. Is there any IIHS procedure that allows someone
21 to decide the likelihood of death or injury based on
22 looking at crash tests with no instrumented dummies at
23 all?

24 A. Same answer as the NHTSA.

25 Q. In your experience in the automotive industry,

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1 A. No. We all contributed. Ultimately, the actual
2 doing of it fell to Mr. Crosby, but he wasn't like the
3 one that made final decisions or anything like that. We
4 all gave our input, but ultimately he was the boots on
5 the ground that made it happen.

6 Q. And did the lawyers contribute to the decisions
7 about how to set up the test at all?

8 A. No. That's an engineering expert role.

9 Q. Why didn't you or Exponent or any other expert
10 want to put a car seat in the vehicle during the crash
11 test?

12 A. Well, like we talked about, the child safety
13 seat was deformed by the rear structures including likely
14 the cargo area -- what's a good word for stuff that
15 doesn't sound so -- equipment, I guess, the items that
16 were in the cargo area likely contributed to the
17 deformation of the child safety seat, which likely
18 interacted with Master Bryson's head and caused his
19 catastrophic injuries.

20 So putting a child safety seat in there without
21 the cargo area items was basically same reason as the
22 cargo area items. Since we don't know exactly what or
23 where any of those items were, putting a child safety
24 seat in there likely wouldn't change anything -- well,
25 let me rephrase that -- likely wouldn't -- what's the

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1 words I'm searching for -- likely wouldn't be applicable
2 in our crash test because we didn't have the cargo area
3 items back there to interact with the seat, the Row 2
4 seat and the child safety seat.

5 Q. Do you agree that the child seat helped hold up
6 the second row in the subject crash?

7 A. Helped hold it up?

8 Q. Correct. So the child seat was pushing back
9 against the second row during the subject crash?

10 A. Somewhat.

11 Q. And I guess I -- I'm not -- I understand why --
12 I think I understand why you didn't put the cargo in.
13 You didn't put the cargo in because you didn't know where
14 it was; correct?

15 A. Right. I mean, the only two people who could,
16 didn't, so we certainly couldn't know.

17 Q. Okay. And would the deformation to the second
18 row seat change based on where the cargo was in the
19 trunk, there again?

20 A. Potentially. That's exactly it. So for us to
21 guess, we might be adding a guessed, g-u-e-s-s-e-d, not
22 guest like a visitor, guessed variable.

23 Q. Is it possible that -- let me strike that.

24 Would the cargo all need to be stacked on top of
25 each other to create the deformation that we see in the

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1 subject crash in your opinion?

2 A. I don't know. I don't know exactly how it was
3 all in there. I don't know.

4 Q. But it is your opinion that if you put the cargo
5 in there, then it will cause the deformation of the
6 second row to look like it did in the Bryson's crash;
7 correct?

8 MR. HILL: Object to the form. Go ahead.

9 THE WITNESS: I guess I will agree, but say --
10 yeah, I'll just agree. Yes.

11 BY MS. CANNELLA:

12 Q. How is it not guessing that if you put the cargo
13 back there, that it will cause the same deformation?

14 A. Because the cargo takes up space. I mean, we
15 know that the F250 got all the way beyond the C pillar in
16 the Escape, even with no cargo in the area. So if we add
17 cargo items, it's just a space issue. It's not guessing.
18 It's just space is taken up and therefore that would push
19 everything in front of the cargo items forward more than
20 they already were.

21 Q. All right. But it would push them forward more
22 -- like the amount of how much it would push them forward
23 depends on where you put the items; right?

24 A. Right. And that would be the guessing part,
25 about where they were.

1 A. Right, correct. And again, it wouldn't really
2 mean anything if we did have those numbers because we
3 don't have the controls and because those numbers would
4 be much lower than in the crash zone.

5 Q. Is it your testimony that you can't use crash
6 test dummy numbers in -- to help you with your analysis
7 unless you have the G numbers and the injury score
8 numbers from the subject test? I mean, that's never the
9 case; correct?

10 A. It is almost never the case, but no, that's not
11 what I'm testifying to. I'm saying that that is one
12 reason that it wouldn't matter. I'm not saying that I
13 can't use those numbers if we had them. The problem is
14 those numbers would be based on a guess about the cargo.

15 Q. Okay. So kind of going back to what I was
16 saying, it's possible to collect information about Gs on
17 a front occupant and a back occupant in the Exponent
18 crash test; correct?

19 A. Yes.

20 Q. And that was not done here; correct?

21 A. Correct.

22 Q. Okay. And do you agree that an instrumented
23 dummy would have told you the forces on Cohen's head
24 during the crash if the F250 had not been lifted?

25 A. No.

1 Q. No matter where you put the cargo, both seat
2 backs would be more deformed forward; correct?

3 A. No. As we talked about before, it's possible
4 that you could jam everything maybe all the way to the
5 right side of the vehicle, and then not get any
6 deformation of that left seat back, but that's not what
7 happened in either case, so there's no point in talking
8 about that.

9 But if the cargo had been exactly the same as it
10 was in the actual crash, which we will never know what
11 that was, then we would have even more forward
12 deformation of the Row 2 seat back, even without a lift
13 kit on the F250.

14 Q. And can you tell the Court how many more inches
15 of forward deformation there would have been?

16 A. No. I cannot for the reasons that we've already
17 discussed.

18 Q. Looking at Plaintiff's Exhibit 32, what in this
19 picture causes the impact to Cohen that would kill him?

20 A. What caused the impact to Master Bryson is the
21 deformed child safety seat with the Row 2 seat behind it,
22 which is being deformed in interacting with the child
23 seat and all the cargo behind it and the cargo -- the
24 lift gate behind it and the Ford F250 behind it.

25 Q. Can you circle -- well, back up.

1 for Cohen?

2 A. I do.

3 Q. Did Cohen stay tethered to his car seat during
4 the crash in your opinion?

5 A. Yes.

6 Q. Did his butt come up out of the seat at all?

7 A. Likely not. I mean, he certainly had some
8 forward movement as evidenced by the bruising on his
9 thighs, but he stayed restrained in the child safety
10 seat.

11 Q. He didn't ramp up, like you talked about before?

12 A. Correct.

13 Q. Do you agree that dummies would have -- putting
14 dummies in the front seats would have changed the way the
15 front seats moved in the crash, in the crash test?

16 A. Somewhat. The applicable one would be the
17 driver's seat, obviously, in this case. And Mrs. Bryson
18 was pretty tiny, so it wouldn't have changed it much.
19 Her seat didn't yield much in the subject crash, and so I
20 wouldn't expect it to yield much with a tiny dummy -- a
21 light-weight dummy to match basically her weight.

22 Q. And is your testimony that this seat wouldn't
23 have yielded much with a light dummy based on any
24 testing?

25 A. Yes. I mean, based on years of experience in

1 seat, and therefore the driver's seat would not reach the
2 child safety seat.

3 He has a fractured left femur, fractured right
4 tibia, fibula and -- well, and his arm injuries as well.

5 Q. Doesn't that indicate that his -- that the front
6 seat did reach him?

7 A. It reached him, absolutely, absolutely. They
8 reached each other, yes. He was pushed forward, yes, but
9 her seat didn't reach the child safety seat is what I was
10 saying.

11 Q. Can you use the annotation tool and show the
12 bottom of the child safety seat, circle that area?

13 A. I'm going to do a square, not a circle --
14 rectangle. Sorry.

15 Q. Okay. And would you agree that's extremely
16 close to the driver seat?

17 MR. HILL: Object to the form.

18 THE WITNESS: I mean, I don't -- I don't know
19 what extremely close really means. It's closer than when
20 this crash started, yes.

21 BY MS. CANNELLA:

22 Q. It looks like probably within a couple of
23 inches; wouldn't you agree?

24 A. I don't know. I'm -- I would have to measure it
25 to know, and I don't know how to do that on here. So I'd

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1 BY MS. CANNELLA:

2 Q. Okay. On the issue of the crash test, do you
3 know how much the crash test cost?

4 A. No.

5 Q. And do you know if the vehicles have been
6 preserved from the crash test?

7 A. I would say yes. I haven't seen them since
8 then, but that's pretty typical.

9 Q. Did you do anything to measure the distance
10 between the second row and the front row after the crash
11 test?

12 A. I did not.

13 Q. Did you do anything to measure the distance
14 between the second row and the front row before the crash
15 test or during the crash test?

16 A. I did not.

17 Q. Did you look at an exemplar car seat as part of
18 your investigation?

19 A. Not specifically regarding this case, no.

20 Q. What assumptions did you make in your analysis
21 about Cohen's seated height from the buttocks to the top
22 of his head?

23 A. Stand by one quick second. I didn't make any
24 assumptions, but I could certainly measure -- no, due to
25 the poor quality of the films that were taken, I cannot

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1 measure, so no assumptions and no measurements.

2 Q. Did you measure the crush in the Exponent
3 vehicle, any of the crashed Exponent vehicles?

4 A. I personally did not.

5 Q. And did you measure the crush in the subject
6 vehicles?

7 A. I certainly did not.

8 Q. Do you agree there's nothing wrong with people
9 using the cargo area of their vehicle to carry personal
10 items?

11 A. Absolutely not. I mean, yes, I agree with that,
12 that there's nothing wrong. There's nothing wrong with
13 people carrying items in their cargo area. There's also
14 nothing wrong with people not remembering exactly what
15 was in there or where it was. I certainly couldn't tell
16 you about my vehicle.

17 Q. Do you know what kind of camping chair was in
18 the trunk? What's your understanding of that?

19 A. Other than camping chair, and then I think I
20 have some photos from my vehicle inspection, but I don't
21 know. The Brysons didn't know sort of makes or models or
22 brands or anything, so beyond what I've seen, I don't
23 know.

24 Q. Did you measure -- take any measurements of the
25 camping chair?

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1 A. No.

2 Q. Did you take any measurements of the shop vac?

3 A. No, I couldn't. It was destroyed, but no, I did
4 not.

5 Q. You didn't take any measurements of it as
6 crushed; correct?

7 A. Correct.

8 Q. Did you obtain a exemplar shop vac or camping
9 chair?

10 A. I couldn't because the Brysons didn't know
11 anything about them to be able to do that.

12 Q. Well, the shop vac, though, was available;
13 correct?

14 A. I don't know. I don't think they knew the kind
15 of size or brand or anything that it was, so not that I'm
16 aware of.

17 Q. Did you have a picture of the shop vac?

18 A. No. I have a picture of a smashed drum and many
19 little plastic shards.

20 Q. Did you take any measurements of what you found
21 of the shop vac?

22 A. No.

23 Q. Could you determine what the make or model of
24 the shop vac was based on what you found?

25 A. No.

1 Q. How about the umbrella stroller, did you take
2 any measurements of the umbrella stroller?

3 A. No.

4 Q. And is the umbrella stroller or the frame of the
5 bolted down back seat of an SUV stronger?

6 A. I have no expert opinion about that. I could
7 probably guess, but I'm not here to guess about stuff, so
8 I have no expert opinion about that.

9 Q. Do you have an opinion about whether an umbrella
10 stroller or the bolted down back seat of an SUV would
11 deform first?

12 A. Same answer.

13 Q. I'm going to ask you the same questions about
14 the other items. What's stronger a shop vac or the
15 bolted down back seat of an SUV?

16 A. No expert opinion. I could guess, but no expert
17 opinion.

18 Q. Okay. And do you have an opinion about whether
19 the shop vac or the back seat of the SUV would deform
20 first?

21 A. No. Same.

22 Q. And do you have any opinion about whether a
23 camping chair or the bolted down back seat of an SUV is
24 stronger?

25 A. No.

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1 Q. Do you have an opinion about which would deform
2 first, the camping chair or the SUV back seat?

3 A. No.

4 Q. And certainly a bag of clothing, you would agree
5 is not stronger than the back of an SUV; correct?

6 A. The back? The Row 2 seat of an SUV?

7 Q. Correct.

8 A. I mean, same answer. I could guess as a lay
9 person, but I certainly don't have an expert opinion
10 about it.

11 Q. Do the scene photos show any of the items that
12 were cargo in the cargo area?

13 A. I think so, but I don't remember.

14 Q. Do you know where the cargo items were found at
15 the scene?

16 A. I believe they were smashed between the rear
17 structures of the SUV, the Ford Escape, and the Row 2
18 seat.

19 Q. And were any of those items found outside the
20 vehicle?

21 A. The spare tire was found outside the vehicle,
22 but I believe it must have been under the vehicle not in
23 the cargo area, so I don't believe any of the cargo area
24 contents were outside the vehicle. Certainly could there
25 have been a piece of plastic from the shop vac? Maybe.

1 Q. All right. How much of the work that you do
2 involves working for auto manufacturers or auto product
3 manufacturers?

4 A. Right now of my open cases, 80 percent maybe.

5 Q. And how much of your work involves other kinds
6 of -- testifying on behalf other kinds of manufacturers?

7 A. Oh, sorry. I answered that based on all
8 manufacturers of products. So auto manufacturers, if we
9 include heavy trucks, 70.

10 All manufacturers of products, 80 maybe, and
11 then other, 20.

12 Q. What does the other 20 percent of your
13 constitute?

14 A. Current cases, criminal cases, cases that are
15 like general negligence where they're not -- no one is
16 suing a product manufacturer. I think that's about it.

17 Q. Have you ever testified own behalf of a person
18 who was a plaintiff in a case?

19 A. I have testified for lawyers who represent folks
20 that have been injured, yes.

21 Q. And how many times?

22 A. Once -- well, twice, same case, Switalski versus
23 Clevenger, and then once I got really close, and the case
24 settled right before my deposition.

25 Q. Have you ever testified for a plaintiff against

1 an auto manufacturer?

2 A. I have never been hired in such a case because I
3 would be conflicted out and because generally the defense
4 lawyers are the ones who call is.

5 Q. So you've never testified for a plaintiff
6 against an auto manufacturer; correct?

7 A. Correct. Not like a car manufacturer. The
8 products that I almost testified about and then didn't
9 was tree trimming equipment that moved on its own, so
10 technically it's an automobile, but Ford, Chrysler,
11 Toyota, that sort of thing.

12 Q. Have you ever testified that a product caused
13 death or injury?

14 A. That would be something that I wouldn't really
15 testify about one way or the other because that would be
16 more of sort of a design thing or a defect thing, which I
17 never -- I have no opinions about, but I've certainly
18 testified that people have died in car crashes or have
19 been injured in car crashes due to, you know, interaction
20 with part of the car, part of the vehicle, et cetera.

21 Q. So you've never testified that a person was not
22 killed or injured by a product?

23 MR. HILL: Object to the form.

24 MS. CANNELLA: Yeah. That was kind of
25 confusing.

1 question. Have you ever testified on the side of the
2 plaintiff in a case where somebody alleges that a product
3 caused the person's death?

4 A. Say it one more time. Let me make sure I get
5 all the words.

6 Q. Have you ever testified on the side of a
7 plaintiff in a case where someone alleges that a product
8 caused a death or injury?

9 A. Yes -- testified, no. The case settled right
10 before that, my deposition. And like I said before in
11 auto cases, I'm conflicted out on the plaintiff's side
12 and plus defense lawyers are who usually calls us.

13 Q. Have you ever testified on the side of the
14 plaintiff in a case where it is alleged that a product
15 killed the plaintiff?

16 A. I think that's exactly the answer I gave, no.

17 Q. Is the answer no?

18 A. Yes.

19 Q. Okay. The answer is no.

20 Second question. Are you conflicted out of
21 testifying against auto manufacturers?

22 A. Yes. So if you were to call me saying you were
23 hiring me for Ford Motor Company --

24 Q. That's the only question I have. I don't need a
25 story about it. That's just the question.

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1 A. Somewhere between 2013 and 2015, probably.

2 Q. And did you do, aside from Transport Canada, did
3 you do any work on behalf of safety organizations?

4 A. Not specifically safety organizations, no.

5 Q. Have you done any work for safety -- strike
6 that. Sorry.

7 Have you done any work to determine how to
8 prevent injuries in crashes?

9 A. Any work? Not specifically.

10 Q. How many times have you testified on behalf of
11 Ford?

12 A. I have no idea opinion. I can count them in the
13 last four years, anyway, if you'd like.

14 Q. No, that's okay. I've got the document.

15 Have you testified on behalf of General Motors?

16 A. I have been hired by General Motors' lawyers,
17 yes, and testified, yes.

18 Q. Have you testified on behalf of Daimler
19 Chrysler?

20 A. Not when it was Daimler Chrysler, I don't
21 believe. Daimler is separate from Stellantis now, but
22 when they were together, no, I don't think so.

23 But have I worked and testified in Stellantis
24 cases, yes; or FCA or Chrysler cases, yes; and Daimler
25 cases, yes.

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1 Q. Have you testified on behalf Toyota?

2 A. I -- there are -- yes.

3 Q. Have you testified on behalf of Mazda?

4 A. Yes.

5 Q. Subaru?

6 A. Yes.

7 Q. How much of the paid work you do is litigation
8 consulting?

9 A. Now, all of it.

10 Q. How many employees does BRC have now?

11 A. 70-ish.

12 Q. How long has BRC existed?

13 A. Since 1986.

14 Q. What is BRC's revenue in a year?

15 A. I have no idea.

16 Q. What's BRC's net profit in a year?

17 A. I have no idea.

18 Q. I'm going to ask you at trial, so I'd like you
19 to look into that. Would you agree to do to that?

20 MR. HILL: Object to the form.

21 THE WITNESS: If Mr. Hill and Ms. Ferguson and
22 BRC -- if they say yes, and BRC can do it, sure.

23 BY MS. CANNELLA:

24 Q. Are you a shareholder of BRC?

25 A. Yes.

1 folded polymer, so right, yeah, you couldn't see it from
2 the front. I can show you where it would be in general
3 from the front, but I can't -- you can't see it from the
4 front.

5 Q. Okay. Which picture would you use to show it in
6 general?

7 A. Let's do my Vehicle Inspection Photo R0017309.

8 Q. This one?

9 A. Yes.

10 Q. All right. Can you circle the area that
11 interacted -- the front of the area that interacted with
12 the belt loop, the belt guide?

13 A. Nothing on the front of the child safety seat
14 interacted with the belt guide. The rear of the child
15 safety seated interacted with the No. 5 belt guide, which
16 then --

17 Q. Sorry. Which area in the front corresponds with
18 the area in the back that interacted?

19 A. It's right around that seam on the right, right
20 behind the right head restraint adjustment.

21 MS. CANNELLA: Okay. So we'll mark this
22 Plaintiff's Exhibit 39.

23 BY MS. CANNELLA:

24 Q. And do you -- well, let me strike that.

25 What is it that actually hit Cohen and caused

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1 his fracture, his skull fracture?

2 A. That head restraint adjustment with the child
3 seat behind it, the vehicle seat behind it, the cargo
4 items behind it, the truck behind it.

5 Q. I'm looking for the thing that actually touched
6 his head to cause the fracture?

7 A. Right.

8 Q. Which thing touched his head?

9 A. The head restraint adjustment knob.

10 Q. Is that the thing that you have there in blue?

11 A. Yes.

12 Q. Okay. Gotcha.

13 MS. CANNELLA: All right. Marking this as
14 Plaintiff's Exhibit 49 -- or 39, I'm sorry.

15 (Whereupon Plaintiff's Exhibit 39 was marked
16 for identification.)

17 THE WITNESS: Five minutes to the end of the
18 media.

19 BY MS. CANNELLA:

20 Q. Okay. Did you do anything to determine if
21 Cohen's head, if Cohen was tall enough for his head to
22 reach that adjustment knob?

23 A. Knowing how kids fit in child safety seats with
24 my experience made it clear, and then it turns out that
25 Mr. Lewis did some surrogate work that showed that that

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1 was true.

2 Q. You didn't do any measurements; correct?

3 A. Correct. I did use my experience, but no, I
4 didn't take a tape measurer out and measure anything.

5 MS. CANNELLA: Okay. We can take a break and
6 switch tapes.

7 THE VIDEOGRAPHER: We're going off the record.
8 The time is 2:17.

9 (Whereupon a short recess break was taken.)

10 THE VIDEOGRAPHER: We're back on the record.
11 Time is 2:28.

12 BY MS. CANNELLA:

13 Q. Okay. All right. Dr. Gwin, we just looked at
14 the area of the car that impacted the back of the car
15 seat, and the area of the car seat that interacted with
16 the belt guide on the second row, and then we saw from
17 the front the headrest adjustment lever, which is it's
18 your opinion that that's what impacted Cohen's skull and
19 caused the skull fracture; correct?

20 A. Yes. And the other constellation of injuries
21 that I said before.

22 Q. Okay. And the AO dislocation as well?

23 A. Yes.

24 Q. Do you agree that an AO dislocation requires
25 opposing forces?

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1 the PDF, this is not a arrow pointing to where the impact
2 was; correct?

3 A. No. It's an arrow pointing to mild flattening
4 of the inferior temporal surface of the right skull.

5 Q. Okay. Can you -- let's see, can you show us on
6 this picture where the impact with the harness adjustment
7 levers was?

8 A. No.

9 Q. You can't see it on this picture?

10 A. Correct.

11 Q. How about on this picture?

12 A. No.

13 Q. This picture?

14 A. Yes.

15 Q. Okay.

16 A. So we know there's an abrasion behind his ear.
17 There's ecchymosis of the ear pinna, itself, so in that
18 general area. And then when Dr. Eisenstat did the scalp
19 reflection, we can see even better where it is.

20 Q. Okay. Can you circle on the screen in front of
21 you where the impact is with the adjustment harness
22 levers?

23 A. Well, like I said, it's the general area, so
24 it's behind his year and his ear.

25 MS. CANNELLA: Okay. Great. And we'll mark

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1 this as Exhibit -- all right.

2 THE REPORTER: Sorry. What was the exhibit,
3 Counsel?

4 MR. HILL: Yeah, what number, Counsel?

5 MS. CANNELLA: I don't know yet. Hold on.
6 Plaintiff's Exhibit 40.

7 (Whereupon Plaintiff's Exhibit 40 was marked
8 for identification.)

9 BY MS. CANNELLA:

10 Q. All right. And did you take any measurements to
11 see how far this area of Cohen's head would have been
12 from the headrest adjustment knob?

13 A. No.

14 MS. CANNELLA: Rick, I wanted to mention to you
15 I don't have any communications. I've double-checked
16 while we were -- while we broke.

17 THE WITNESS: Like correspondence?

18 MS. CANNELLA: Correct. Can somebody send those
19 to us real quick before we end today?

20 MR. HILL: What do you mean by "correspondence"?
21 You mean, like an e-mail from our office that sends a
22 file link or something?

23 MS. CANNELLA: All e-mails that are discoverable
24 under Rule 26, which includes any e-mails about payment,
25 assumptions, or facts.

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1 A. I'm not sure what you mean by opposing forces,
2 but --

3 Q. Like, if everything was flip-flopped, you know
4 what I'm saying? We can look at the -- we can look at
5 the distance from the child's ear to the adjustment knob
6 on the left side instead of the right side, is what I'm
7 saying.

8 A. So this child is leaning forward. This is not a
9 sleeping kid, who's leaning against the head restraint or
10 headrest of his child safety seat.

11 Q. Uh-huh.

12 A. So we'd have to be there, first of all. And
13 again if it's left, instead of right, and then leaning,
14 the child would have to be leaning outboard in this case,
15 flip-flopped from our -- the real case.

16 And then yes, his ear -- his skull adjacent to
17 his ear would be very near the location, adjacent to the
18 location of that adjustment knob statically, and then
19 dynamically as the seat rotates and the child seat
20 rotates and the child seat is twisted somewhat, and, you
21 know, the crash all happens, yes, it is in that area
22 contacting his skull.

23 Q. Okay. But you didn't do any surrogate testing
24 to test that theory; correct?

25 A. Correct.

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1 MS. CANNELLA: I'm going to mark this picture as
2 Plaintiff's Exhibit 46.

3 (Whereupon Plaintiff's Exhibit 46 was marked
4 for identification.)

5 BY MS. CANNELLA:

6 Q. Do you agree there were milliseconds where the
7 crash had begun, but Cohen had not yet received an
8 injury?

9 A. Yes.

10 Q. Do you agree that Cohen only experienced his
11 death once the intrusion reaches him?

12 A. Yes.

13 Q. Did you do anything to quantify the amount of
14 second-row intrusion that would have been required to
15 cause Cohen's death?

16 A. I did not.

17 Q. Do you agree there's randomness to motor vehicle
18 accidents?

19 MR. HILL: Object to form.

20 THE WITNESS: I don't know how to answer that
21 question.

22 BY MS. CANNELLA:

23 Q. In other words, you could have the exact same
24 wreck twice, but the outcome -- there would be
25 differences in the outcome?

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1 Q. Did you design any crash testing?

2 A. Oh, heavens no.

3 Q. Okay. Do you have hospital privileges anywhere?

4 A. Not anymore.

5 Q. Did you visit the scene of this crash?

6 A. No.

7 Q. Did you measure the crash in either the subject
8 wreck or the crash test?

9 A. No. There are scans that we could do some
10 measurements, but I can't tell you what those numbers are
11 today.

12 Q. And there's a scan in your file. Is that one
13 that you performed or someone else?

14 A. Ms. Gaul, the test engineer, performed that
15 scan.

16 Q. And what is it of?

17 A. The subject vehicle.

18 Q. Okay. Did you use -- come to any conclusions
19 based on that scan?

20 A. Not the scan in particular, no.

21 Q. Did you scan the inside of the vehicle or just
22 the outside?

23 A. Probably not the outside at all, just the
24 inside.

25 Q. Okay. You've never published any papers on auto

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1 design; correct?

2 A. Correct -- oh, I'm sorry. Wait. Only in terms
3 of onboard fuel vapor recovery.

4 Q. Okay.

5 A. But nothing else.

6 Q. All right. I want to look in your report -- or
7 I'm sorry, your disclosure, which I've marked as
8 Plaintiff's Exhibit 15.

9 Do you see that on your screen?

10 A. Yes.

11 Q. Have you seen your disclosure before?

12 A. Yes.

13 Q. I want to look at the highlighted sentence here,
14 so if you could just take a second and read up to that
15 highlighted sentence.

16 Just let me know when you're done.

17 A. Okay.

18 Q. That highlighted sentence says that you're
19 expected to testify regarding the same subjects in
20 relation to the vehicle crash testing performed at
21 Exponent. And the same subjects, as I understand it, are
22 biomechanics of the occupants inside the Escape at the
23 time of the incident, the cause of injury and death to
24 Cohen, and the forces experienced by Cohen in the subject
25 crash.

1 Are those the things you're going to testify in
2 relation to the Exponent test?

3 A. I mean, like we talked about before, I'm not
4 going to talk about forces in terms of pounds or newtons
5 or anything like that, so I would better characterize it
6 as noted in my report.

7 So what I will testify about is that injury
8 causation would have -- you know, the same injury outcome
9 would have occurred for Cohen Bryson whether -- in an
10 unlifted -- let me start over.

11 The same injury outcome would have occurred for
12 Cohen Bryson whether or not Mr. Elliott's truck were
13 lifted or not.

14 Q. And how -- can you give me like a short summary
15 of how the crash test informs your opinions about what
16 happened during the crash?

17 MR. HILL: Object to the form, but go ahead.
18 You can answer.

19 THE WITNESS: So our crash test at Exponent
20 doesn't really help us understand what happened during
21 the subject crash because of the independent variable of
22 no lift kit in the Exponent test. So it doesn't because
23 it's a different crash.

24 Q. Okay. And your disclosure says that you relied
25 on the crash reconstructions and simulations. What are

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1 Q. Do you have any opinions about what
2 Mr. Pasquerella said, or are you leaving that to him?

3 A. I'm leaving that to him.

4 Q. Okay. Great. Did you rely on anything
5 Mr. Buckner did?

6 A. No.

7 Q. Did you rely on anything Mr. Lewis did?

8 A. No.

9 Q. Did you rely on anything Mr. Rosch did?

10 A. No.

11 Q. Did you rely on any RC, Rough Country, documents
12 produced in discovery?

13 A. I'm probably going to get this wrong because
14 it's a lawyer sort of thing, but I think you mean like
15 documents that were created by Rough Country as opposed
16 to my client is Rough Country, and they produced medical
17 records to me. I think that's what you mean.

18 Q. Yeah, I'll rephrase it.

19 Did you rely on any internal Rough Country
20 documents to form your opinion?

21 A. No.

22 Q. Does your -- is your opinion -- let's see how to
23 phrase this. Would you know that Cohen would have
24 survived -- I'm sorry. Strike that.

25 Would you be able to give the opinion that Cohen

1 would have died in an unlifted -- a wreck with an
2 unlifted F250 without having run the crash test?

3 MR. HILL: Object to the form, but you can go
4 ahead.

5 THE WITNESS: Yes. Based on Mr. Grimes'
6 opinion, based on his expertise that the F250 -- unlifted
7 F250 would intrude into the occupant space because of
8 bumper height mismatch, and I will -- I will be corrected
9 by Mr. Grimes if he says that's a terrible way to
10 characterize it.

11 But even before we ran the test, his opinion
12 that it was -- his opinion was that it was likely that
13 due to the bumper heights of the two vehicles, probably a
14 better way to say it, the F250 unlifted would still
15 intrude into the Escape.

16 BY MS. CANNELLA:

17 Q. So it's Grimes' opinion. Anything else that you
18 rely on and not need the crash test for your opinion
19 about the alternative design?

20 MR. HILL: Object to the form.

21 THE WITNESS: No.

22 BY MS. CANNELLA:

23 Q. No. All right. Okay. I've marked as
24 Plaintiff's Exhibit 21 the preliminary file summary. Who
25 prepared this document?

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1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF ALAMEDA)
4
5

6 I, JUSTUS BALENTINE, Certified Shorthand
7 Reporter No. 13859, hereby certify that the foregoing
8 proceeding was taken by me at the time and place herein
9 set forth;

10 That the said proceeding was taken down by me
11 in shorthand and thereafter transcribed under my
12 direction and supervision, and I hereby certify the
13 foregoing proceeding is a full, true, and correct
14 transcript of my shorthand notes so taken;

15 That dismantling this transcript will void the
16 certification by the Certified Shorthand Reporter.

17 I further certify that I am neither counsel for
18 nor am I in any way related to any party to said action,
19 nor am I in any way interested in the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 17th day of June, 2024.

22
23 
24

25 JUSTUS BALENTINE, CSR NO. 13859